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CHAPTER 409
S.P. 496 - L.D. 1450

An Act To Amend Water Quality Standards

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are significant and long-standing water quality issues, including recurring algae blooms, associated with certain Class C waters; and

Whereas, the mitigation of water quality impairments on certain Class C waters requires extraordinary limitations on the discharge of certain pollutants, including phosphorus, that will reasonably necessitate longer than usual time frames for implementation; and

Whereas, there are presently expired wastewater discharge licenses for discharges to these waters that permit excessive pollutant discharges to certain Class C waters; and

Whereas, it is necessary promptly to address such expired wastewater discharge licenses in order to begin mitigation and provide for improvement in water quality; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §465, sub-§3, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

> B. The dissolved oxygen content of Class B waters ~~shall~~ may not be ~~not~~ less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration ~~shall~~ may not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration ~~shall~~ may not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of ~~427~~ 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.

Sec. 2. 38 MRSA §465, sub-§4, ¶B, as amended by PL 2003, c. 664, §1, is repealed and the following enacted in its place:

> B. The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality

sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water.

This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.

Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in Class C waters may not exceed a geometric mean of 126 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

Sec. 3. 38 MRSA §465-B, sub-§2, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The dissolved oxygen content of Class SB waters ~~shall~~ must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program ~~Manual of Operations, Part I, Sanitation of Shellfish Growing Areas~~, United ~~State Department of~~ States Food and Drug Administration.

Sec. 4. 38 MRSA §465-B, sub-§3, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The dissolved oxygen content of Class SC waters ~~shall~~ must be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The

numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program ~~Manual of Operations, Part I, Sanitation of Shellfish Growing Areas~~, United States Food and Drug Administration.

Sec. 5. Water quality modeling. The Department of Environmental Protection shall supervise additional modeling of Gulf Island Pond on the Androscoggin River in order to review and, as appropriate, revise the total maximum daily load for phosphorus.

1. The additional modeling must be done under contract to the department and funded by those dischargers seeking additional information on the present total maximum daily load for phosphorus.

2. The additional modeling must be based on ambient data collected under reduced loading conditions to Gulf Island Pond, including model parameters such as sediment oxygen demand, chlorophyll-a concentration at critical conditions and phosphorus assimilation and mineralization rates.

3. The model revisions must be completed by March 15, 2009 and submitted to the Department of Environmental Protection and a 3rd-party peer reviewer for review and evaluation. The 3rd-party peer reviewer must be approved by the joint standing committee of the Legislature having jurisdiction over natural resources matters.

4. The peer reviewer shall submit recommendations on the model revisions and any revised total maximum daily load for phosphorus to the Department of Environmental Protection by June 15, 2009. By September 15, 2009, the department shall publish for review and public comment a revised modeling report and total maximum daily load for phosphorus that is based on the peer reviewer's recommendations.

5. By March 15, 2010, the Department of Environmental Protection shall issue revised licenses, as needed, that are based on the revised and approved total maximum daily load report for phosphorus created as a result of the modeling revisions pursuant to this section.

6. Any reallocation of phosphorus among licensed dischargers contributing to algae blooms in Gulf Island Pond must take into consideration all prior total maximum daily load allocations, license limits and attainment of interim or final phosphorus limits as issued in prior total maximum daily loads or licenses so as not to create inequities in regard to attainment of prior phosphorus limits. The purpose of this subsection is to prevent penalizing dischargers who have attained early compliance with prior license limits or total maximum daily load allocations.

7. Any change in license limits based on a revised and approved total maximum daily load for phosphorus must comply with anti-backsliding requirements contained in state and federal law.

8. The Department of Environmental Protection is not obligated to make revisions to the model or existing approved total maximum daily load if funding is not provided for the additional work described in this section.

9. It is the intent of the Legislature that dischargers shall make continuous progress in actual effluent reductions towards reaching final allocations under the total maximum daily load allocations in existence on the effective date of this section or as revised under this section to March 15, 2010.

Sec. 6. Operations study. The Department of Environmental Protection shall supervise a study that evaluates the operation of the dam on Gulf Island Pond with regard to its impact on algae blooms. Hydrodynamic modeling of Gulf Island Pond and the dam must be included in the study as well as an analysis of the dam's operation to determine the feasibility and practicability of forecasting algae blooms and modifying the dam's operation to mitigate the likelihood of the occurrence of algae blooms.

The study must be voluntarily funded by those wastewater dischargers that choose to participate in the study. The study must be completed by September 2008. The operator of the dam on Gulf Island Pond shall cooperate with the department in the conduct of the study, including the submission of any relevant information upon request. If any person demonstrates that the information sought by the department in connection with the study is entitled to protection as a trade secret and so falls within a privilege against discovery and thus is not a public record pursuant to the Maine Revised Statutes, Title 1, section 402, subsection 3, paragraph B, the information must be submitted to the department but be treated by the department as confidential and not available to public inspection.

Dischargers who have reached their final total maximum daily load allocations as enforceable license limits may participate in the study, but may not be considered for additional control efforts until other dischargers and the owner of the dam on Gulf Island Pond have either reached their final allocations or implemented final mitigation efforts. It is the Legislature's intent that if the study undertaken pursuant to this section results in mitigation efforts that include alterations to the dam's operation in lieu of discharger reductions, not including effluent reductions that are required under a license or other agreement, the dam owner or operator will not be required to implement the alterations unless the dischargers compensate the dam owner for such alterations.

Sec. 7. Report to Joint Standing Committee on Natural Resources. By February 1, 2006 and annually by that date until 2011, the Department of Environmental Protection shall submit a report on the status of activities undertaken pursuant to this Act to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The committee may report out legislation related to the annual report to the Legislature.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 20, 2005.